



Comptroller General
of the United States

Washington, D.C. 20548

144979

Decision

Matter of: Nomura Enterprise Inc.--Reconsideration

File: B-244993.2; B-245521.2

Date: October 9, 1991

Al Weed for the protester.
Vera Meza, Esq., Department of the Army, for the agency.
Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Bidder's failure under a total small disadvantaged business (SDB) set-aside to certify that all end items to be furnished will be manufactured or produced by a small business concern does not render the firm's bid nonresponsive where the bidder is obligated by another solicitation provision to furnish only SDB end items in its performance of the contract.
2. Standard bid representations and certifications, such as the Certificate of Independent Price Determination, the Taxpayer Identification clause, and Certificate of Authority to sign corporate bids, concern bidder responsibility, not bid responsiveness, and therefore may be supplied after bid opening.

DECISION

Nomura Enterprise Inc. requests reconsideration of our decision dismissing its protests of the cancellation after bid opening of invitation for bids (IFB) No. DAAA21-91-B-0006 (-0006), issued by the Army Armament, Munitions and Chemical Command, for the fabrication of various quantities of metal parts used on the M139 Multiple Delivery Mine System, and the Army's resolicitation of this requirement under IFB No. DAAA21-91-B-0010 (-0010).

We affirm the dismissals.

IFB No. -0006, which was issued as a total small disadvantaged business (SDB) set-aside, contained the Certificate of Procurement Integrity clause, as set forth in Federal Acquisition Regulation (FAR) § 52.203-8, and advised offerors that the "[f]ailure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive."

The certificate only provided space for listing violations or possible violations of the Office of Federal Procurement Policy Act and did not provide a space for bidders' signatures or identify where bidders should sign the certificate.

In Nomura Enter. Inc., B-244993; B-245521, Sept. 6, 1991, 91-2 CPD ¶ ____, we dismissed Nomura's protests of IFB Nos. -0006 and -0010 because we found that the Army had a compelling reason to cancel IFB No. -0006 after bid opening and Nomura had no legal basis to challenge the Army's resolicitation of this requirement. Specifically, we found the cancellation proper because the IFB's Certificate of Procurement Integrity failed to provide a signature line or space, which misled the low bidder (Ft. Belknap Industries) and other bidders that failed to sign the certificate, and because the record showed that Ft. Belknap otherwise was eligible for award. See Shifa Servs. Inc., B-242686, May 20, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 483.

Nomura now protests that Ft. Belknap was not otherwise eligible for award because it failed to certify that all end items to be furnished under the contract would be manufactured by a small business concern, thereby making its bid nonresponsive.^{1/} Nomura also argues that Ft. Belknap's bid is nonresponsive because Ft. Belknap did not accurately complete other bid representations and certifications--specifically, the Certificate of Independent Price Determination, the corporate status section of the Taxpayer Identification clause, and the Certificate of Authority to sign corporate bids. Nomura contends that since Ft. Belknap's was not otherwise responsive, it was not prejudiced by the deficiency in the Certificate of Procurement Integrity clause in the IFB, and that Nomura was thus entitled to award under IFB No. -0006.

IFB No. -0006 contained the standard Small Business Concern Representation clause, set forth at FAR § 52.219-1 (FAC 90-3), in which a bidder certifies that it is, or is not, a small business concern and that all, or not all, end items to be furnished will be manufactured or produced by a small business concern. The solicitation also incorporated by reference

^{1/} Nomura states that it did not receive a copy of Ft. Belknap's bid until September 18 after our decision in Nomura Enter. Inc., supra. Nomura's reconsideration request was filed within 10 working days thereafter.

Department of Defense FAR Supplement § 252.219-7006
(DAC 88-14) "Notice of Total Small Disadvantaged Business
Set-Aside," that provides in pertinent part:

"An SDB manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing this contract, only end items manufactured or produced by SDB concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts."

While Ft. Belknap certified that it is a small business concern, it did not complete the remainder of the clause to indicate whether all, or not all, contract end items would be manufactured or produced by a small business concern.

Generally, a bidder's failure to complete the end item certification requires the rejection of the bid as nonresponsive since to be responsive a bid on a small business set-aside must establish a bidder's obligation to furnish only end items manufactured or produced by a small business. J-MAR Metal Fabricating Co., B-217224, Mar. 21, 1985, 85-1 CPD ¶ 329. However, where, by virtue of signing the bid, a bidder would be obligated to furnish only small business items, the failure to complete the end item certification does not render the bid nonresponsive. See Concorde Battery Corp., 68 Comp. Gen. 523 (1989), 89-2 CPD ¶ 17. Obviously, the language quoted above obligated bidders to furnish the end product of an SDB. Therefore, notwithstanding Ft. Belknap's failure to complete the FAR § 52.219-1 clause, by submission of its signed bid it obligated itself to furnish only SDB end items. As an SDB is by definition a small business, the requirement of the FAR clause is met here.

Nomura argues that Concorde Battery Corp. was incorrectly decided and should be overruled. Specifically, Nomura contends that a bidder must affirmatively demonstrate its intent to furnish small business end items by completing the end item certification. We disagree. Where a solicitation provision imposes a performance requirement on a bidder, a separate certification provision that imposes the same requirement adds nothing to the obligation of the bidder and therefore need not be completed; an incomplete solicitation certification only renders a bid nonresponsive if the certification provision imposes requirements materially different from those to which the contractor is otherwise

bound, either by its offer or by law. See Certified Slings, Inc., B-243085, May 6, 1991, 91-1 CPD ¶ 442 (incomplete small business end item certification).

The completion of the Independent Price Determination Certificate, Taxpayer Identification clause, and Certificate of Authority to sign corporate bids pertain to responsibility and not responsiveness. See Seyforth Roofing Co., Inc., B-241719.2, Mar. 11, 1991, 91-1 CPD ¶ 268; Watson Agency, Inc., B-241072, Dec. 19, 1990, 90-2 CPD ¶ 506; and Siska Construction Co., Inc.--Recon., 64 Comp. Gen. 385 (1985), 85-1 CPD ¶ 331. Thus, the failure of a bidder to properly complete such items may be corrected after bid opening. Id.

Accordingly, we again conclude that Ft. Belknap, aside from its failure to sign the Certificate of Procurement Integrity, was in line for award and therefore was prejudiced by the defect in the solicitation. Therefore, the dismissals are affirmed.



Ronald Berger
Associate General Counsel